

Remarks

The Applicant wishes to thank the Examiner for the courtesy extended to Applicant's attorney during the phone Interview.

The Office Action mailed January 12, 2005 has been carefully considered. Applicant has amended Claims 1 and 19.

The Office Action again rejected Claims 1-2, 6, 9-11, and 17-19 under 35 U.S.C. 103(a) as being obvious to one of ordinary skill in the art over U.S. Patent No. 4,799,923 to Campbell in view of U.S. Patent No. 6,296,164 to Russo. Specifically, the Office Action says that it would have been obvious to one of ordinary skill in the art at the time of the invention to fabricate the pocket disclosed by Campbell to open away from the skin of the user as taught by Russo to prevent fluids from reaching the patient's skin.

The Examiner indicated that he had not given patentable weight to whether the tube moves inside the pocket since the tube was not positively claimed. During the phone interview the Examiner indicated that he would consider such an amendment. Therefore, Claims 1 and 19 have been amended to positively claim the tube.

It is noted that the Office action was labeled final, despite the fact that it was the first office action after applicant's filing of a request for continued examination. The holding of finality was premature and should be withdrawn. According to MPEP Section 706.07(b), the first office action after an RCE cannot be made final if the submission in the parent was denied entry because it raised new issues. Looking at the Advisory action mailed October 16, 2004, that is exactly the case here. Examination of this response on the merits is required to comply with PTO procedure.

By this amendment Applicant has placed the case in condition for immediate allowance and such action is respectfully requested. However, if any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



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